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RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:

CONTROL NO. 2006-009
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035-5479
Attn: City Engineer

EXEMPT FROM RECORDING FEES
PER GOVERNMENT CODE §§6103, 27383

APN 28-12-19

AGREEMENT MODIFYING DRIVEWAY ACCESS EASEMENT

Grantor: Shapell Industries of Northern California, A Division of Shapell Industries, Inc., A Delaware Corporation

Grantee: City of Milpitas, a Municipal Corporation

Whereas, Grantor is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California ("Grantor's Property").

Whereas, Grantee is the owner of certain real property located in the City of Milpitas, County of Santa Clara, State of California ("Grantee's Property").

Whereas, Grantor has previously granted an Easement Area for driveway access to Grantee in "Easement And Agreement Regarding Driveway", filed in County of Santa Clara, document # 16409691, on August 8, 2002.

Whereas, Grantor is redeveloping its property and desires to relocate the subject Easement Area, and Grantee is willing,

Whereas, the "Easement Area" is now redefined as the strip of land located on that portion of Grantor's Property legally described on Exhibit "A" and depicted on Exhibit "B" as new access easement attached hereto and made a part hereof.

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Easement

Grantor hereby grants to Grantee a non-exclusive easement appurtenant to and for the benefit of Grantee's Property and for the benefit of Grantee, its successors and assigns, in

common with others, over, upon, through and across the Easement Area for the purpose of installing, replacing and maintaining the access driveway as hereinafter described.

This easement grants to Grantee the right to enter and leave the Easement Area to do or to take any of the actions described in this document and no other rights are granted to Grantee except as expressly set forth herein.

2. Access Driveway

Grantor and Grantee acknowledge and agree that improvements constituting an access driveway have previously been installed and presently exist over the general vicinity of the Easement Area as depicted on Exhibit "B" ("Access Driveway"). The Access Driveway enables access, ingress and egress between Grantor's Property and Grantee's Property.

Any change in size, configuration or layout of the Access Driveway by Grantee shall be subject to prior written approval by Grantor.

Grantee will not place or permit the placement of any building or other structure upon the Easement Area and will not allow any action that could damage or interfere with the Access Driveway on Grantor's Property.

Grantor will not place or permit the placement of any building or other structure upon the nearby area of the Easement Area and will not allow any action that could damage or interfere with the Access Driveway on Grantee's Property

3. Repair

Grantee shall keep and maintain the Easement Area, including without limitation, sweeping, striping, paving, cleaning and landscaping, in a first-class condition in keeping with standards of the Grantor's Property. In the event Grantee fails to repair any damage to the Easement Area which is Grantee's responsibility within thirty (30) days after notice from Grantor, Grantor shall have the right to repair same at Grantee's expense.

4. Right to Relocate

Grantor expressly reserves the right to relocate the Access Driveway and/or Easement Area in connection with any redevelopment or re-alignment of circulation of the facility located on Grantor's Property so long as same does not materially adversely affect access, ingress or egress between the Grantor Property and Grantee Property. Grantor shall provide the Grantee with thirty (30) days prior written notice of its intent to relocate the Access Driveway and/or Easement Area and shall consider any reasonable request from the Grantee to revise or delay its intent to relocate.

Grantee expressly reserves the right to relocate the Access Driveway and/or Easement Area in connection with any redevelopment or re-alignment of circulation of the facility located on Grantee's Property so long as same does not materially adversely affect access, ingress or egress between the Grantor Property and Grantee Property. Grantee shall provide the Grantor with thirty (30) days prior written notice of its intent to relocate

the Access Driveway and/or Easement Area and shall consider any reasonable request from the Grantor to revise or delay its intent to relocate.

5. Indemnity

Except for the willful acts, omissions or negligence of Grantor, its employees, contractors and agents, Grantee shall indemnify, hold harmless, release and defend Grantor, its officers, agents, employees and contractors from and against any and all actions, claims, demands and damages, including bodily injury and property damages, as well as for expenses including attorneys' fees and other defense costs or liabilities, that may be asserted by any person or entity, including Grantee, its agents, contractors and employees to the extent arising directly or indirectly from the activities of Grantee or its agents, employees or contractors in connection with the Easement Area.

Except for the willful acts, omissions or negligence of Grantee, its employees, contractors and agents, Grantor shall indemnify, hold harmless, release and defend Grantee, its officers, agents, employees and contractors from and against any and all actions, claims, demands and damages, including bodily injury and property damages, as well as for expenses including attorneys' fees and other defense costs or liabilities, that may be asserted by any person or entity, including Grantor, its agents, contractors and employees to the extent arising directly or indirectly from the activities of Grantor or its agents, employees or contractors in connection with the Easement Area.

6. No Interference

There shall be no interference in the free flow of traffic between the Grantor Property and the Grantee Property including without limitation during any time that Grantee may be performing any repair or improvement work to the Access Driveway or Grantor may be performing any repair or improvement work to the area near the Access Driveway.

7. Prior Encumbrances

This easement is subject and subordinate to all prior easements and encumbrances of record.

8 Notices

Notices shall be sent to Grantee as follows:

City of Milpitas
Attention: City Engineer
455 East Calaveras Blvd
Milpitas CA 95035

Notices shall be sent to Grantor as follows:

Shapell Industries, Inc.
Attention: Mr. Kelly Erardi
100 North Milpitas Blvd
Milpitas CA 95035

All notices shall be sent postage prepaid, certified mail, return receipt requested and shall be deemed delivered on the earlier of receipt or three (3) days after mailed as aforesaid.

9. Effectiveness

This Agreement shall take effect as of the date hereof and run in perpetuity with the land.

10. Attorneys' Fees

In the event that suit is brought for the enforcement of the Agreement or as the result of any alleged breach thereof, the prevailing party or parties to such suit shall be entitled to be paid actual attorneys' fees by the losing party or parties, and any judgement or decree rendered shall include an award thereof.

11. Governing Law

The laws of the State of California shall govern the validity, venue, construction, performance and enforcement of this Agreement.

12. No Public Rights

The provisions of this Agreement shall not be deemed to constitute a dedication for street use by the public nor to create any rights in the general public. Grantor acknowledges that Grantee intends to allow the general public to use the Easement Area and Access Driveway for purposes consistent with this Grant of Easement.

This easement is executed this _____ day of _____ 200__.

Grantor: Shapell Industries of Northern California, A Division of Shapell Industries, Inc, a Delaware Corporation

print name: Kelly Erardi print title: Vice President, Commercial Manager

print name: Joe BuBois print title: Vice President, Commercial Construction

Grantee: City of Milpitas, A Municipal Corporation

print name: Charles Lawson print title: City Manager

approved as to form:

Peter Spoerl Assistant City Attorney
print name: print title:

APPROVED
DATE 5-11-06
[Signature]
CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION
ACCESS EASEMENT

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SANTA CLARA,
STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL 2 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED
JULY 20, 1987, IN BOOK 576 OF MAPS AT PAGE 3 IN THE OFFICE OF THE COUNTY
RECORDER OF SANTA CLARA COUNTY, SITUATED IN THE CITY OF MILPITAS,
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

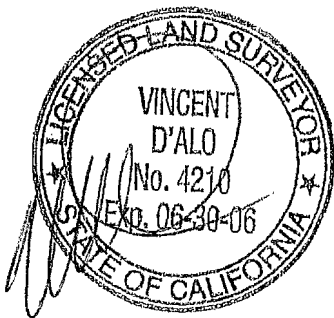
COMMENCING AT A POINT ON THE NORTH LINE OF CALAVERAS BOULEVARD AT
THE SOUTHWEST CORNER OF PARCEL 3 OF SAID MAP (576 M 3); THENCE FROM
SAID POINT OF COMMENCEMENT LEAVING SAID SOUTHWEST CORNER OF SAID
PARCEL 3 NORTH 14°31'17" WEST 160.00' FEET TO THE SOUTHWEST CORNER OF
SAID PARCEL 2; THENCE FROM SAID SOUTHWEST CORNER OF PARCEL 2 NORTH
14°31'17" WEST 366.97' FEET ALONG THE WEST LINE OF SAID PARCEL 2 TO THE
TRUE POINT OF BEGINNING, SAID TRUE POINT OF BEGINNING IS ALSO THE MOST
NORTHERLY POINT OF SAID ACCESS EASEMENT. THENCE FROM TRUE POINT OF
BEGINNING THE FOLLOWING THREE COURSES:

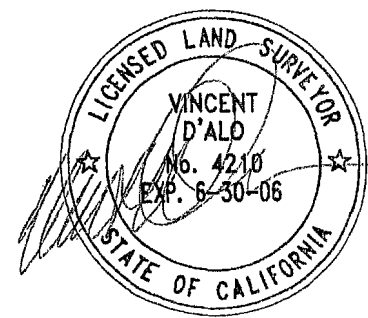
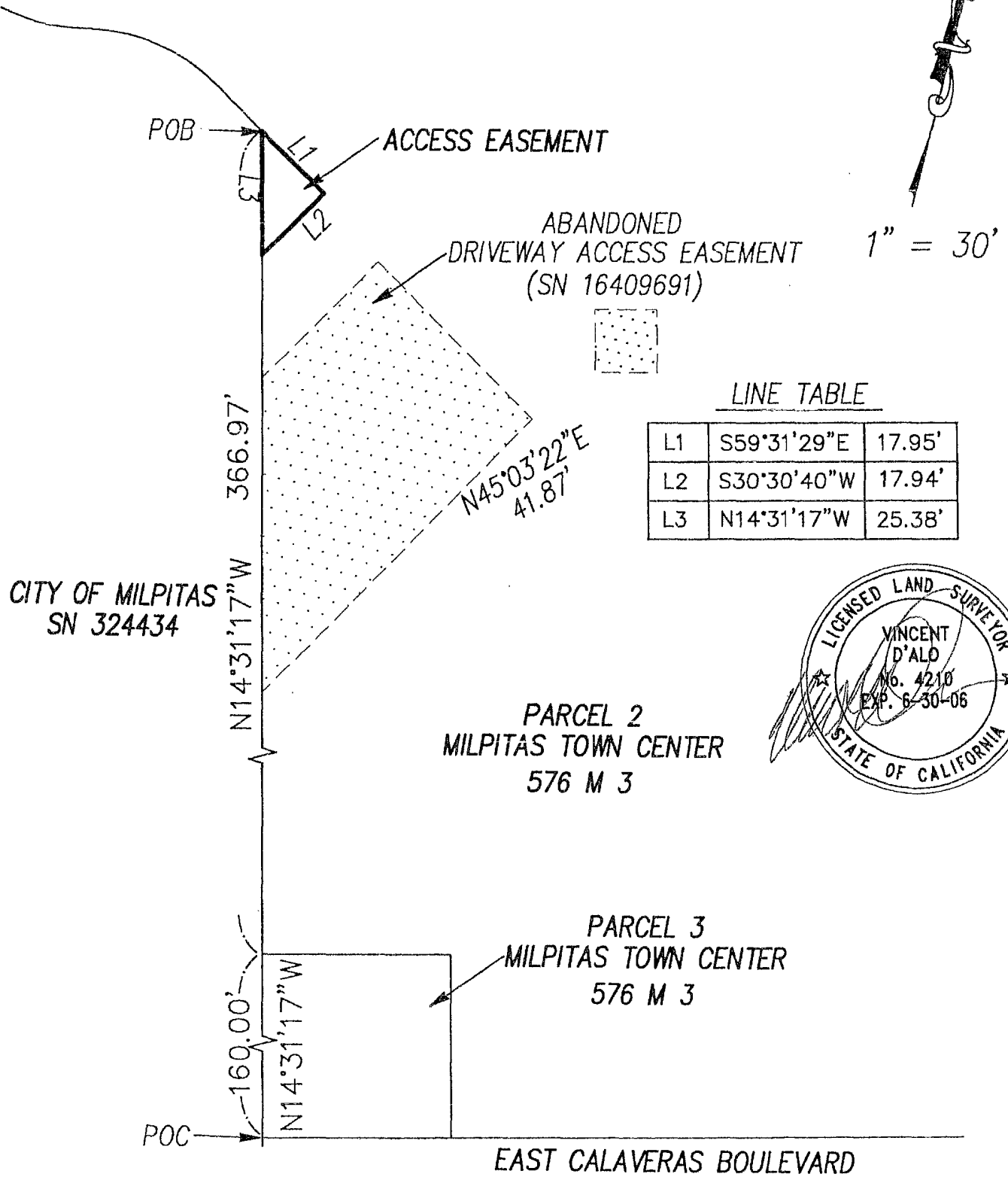
SOUTH 59°31'29" EAST 17.95 FEET;

SOUTH 30°30'40" WEST 17.94' FEET;

NORTH 14°31'17" WEST 25.38 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 161.08 SQUARE FEET MORE OR LESS.

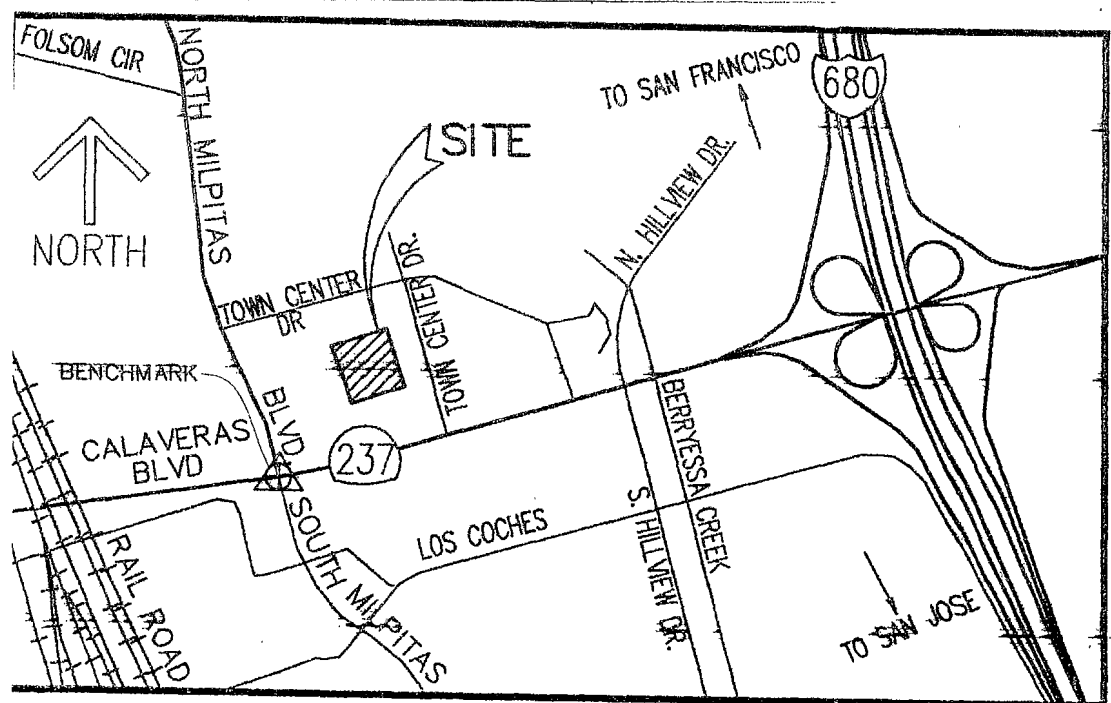
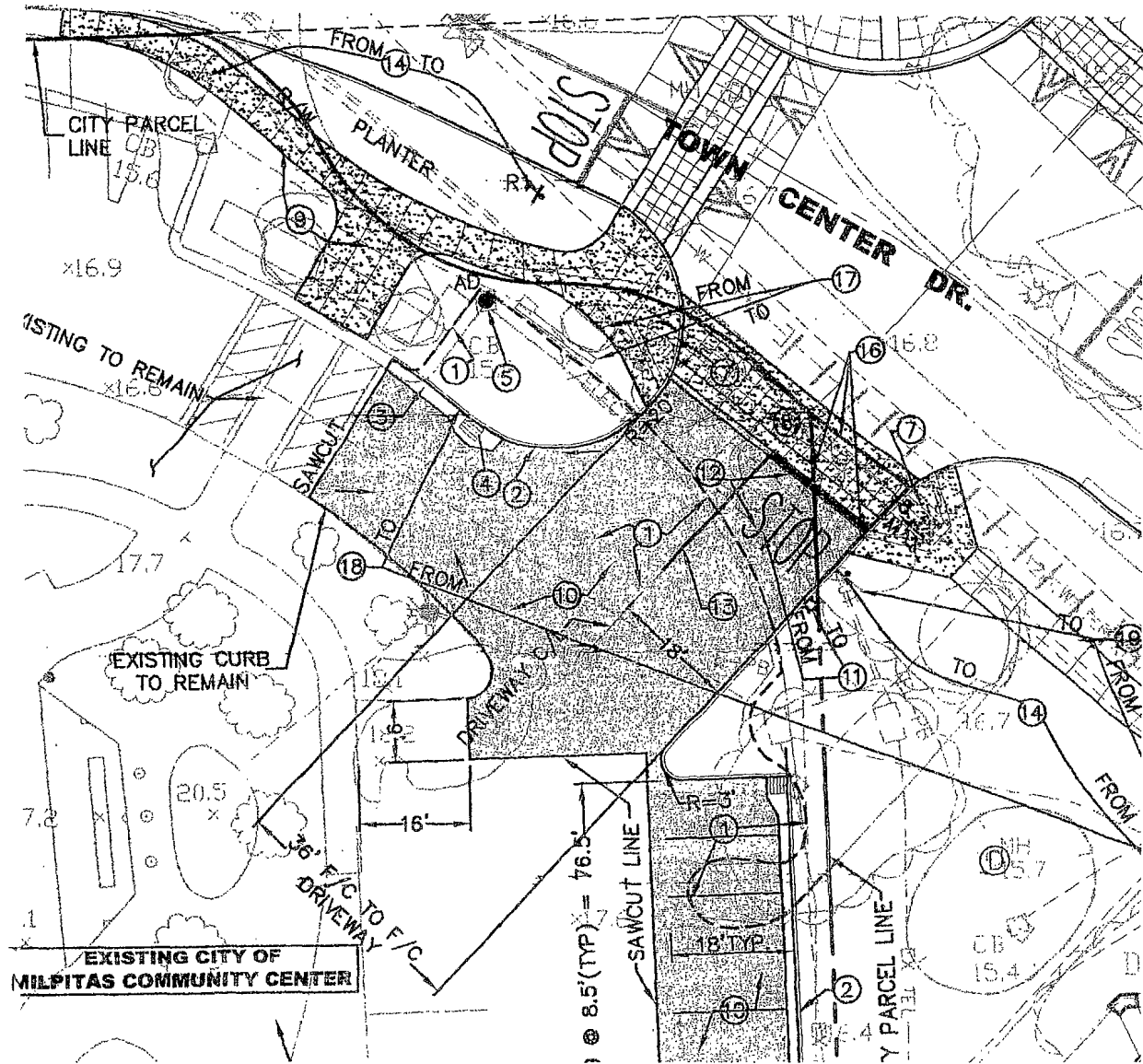




PLANNERS
CIVIL ENGINEERS
SURVEYORS

1390 SOUTH MAIN STREET
SUITE 310
WALNUT CREEK, CA. 94596
(925) 476-2300
FAX (925) 476-2350

Subject EXHIBIT B
Job No. 204056 Scale 1" = 30'
By GZ Date 11-04-2005 Chkd.
SHEET 1 OF 1



VICINITY MAP
NTS